

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:96-cr-180

JAMES B. TORRENCE, JR.,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated to proceed under the Standard Procedure. The Court has now received materials submitted by the Probation Office and the parties on this issue.

The Defendant was sentenced as a career offender. For this reason, his sentencing range is unchanged as a result of the Fair Sentencing Act of 2010 and the November 1, 2011, Sentencing Guidelines amendment, and he is, therefore, not eligible for a reduction of his sentence. In their respective written responses, both the United States and the Defendant acknowledge that the

Defendant is not eligible for a sentence reduction. (Documents 208 and 209). For these reasons, the Court **ORDERS** that the § 3582 Motion (Document 205) be **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office and to the United States Marshals.

ENTER: December 14, 2011



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA